

AMENDED IN ASSEMBLY FEBRUARY 27, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 111

Introduced by Assembly Member Corbett

January 13, 2003

An act to amend Section ~~3044~~ 3011 of the Family Code, and to amend Section 273a of, and to add Title 10.5a (commencing with Section 14145) to Part 4 of, the Penal Code, relating to child abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 111, as amended, Corbett. Child abuse: mental suffering.

(1) ~~Existing law establishes a rebuttable presumption that the award of sole or joint physical or legal custody to a person who has, within the past 5 years, perpetrated domestic violence against the other party seeking custody, the child, or the child's siblings is detrimental to the best interests of the child.~~

~~This bill would expand that presumption to include the perpetration of emotional abuse, as defined, against the child or the child's siblings.~~

(2) Existing law makes it either a misdemeanor or a felony, punishable as specified, to willfully cause or permit any child to suffer, or to inflict thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully cause or permit the person or health of that child to be injured, or willfully cause or permit that child to be placed in a situation where his or her person or health is endangered, under circumstances or conditions likely to produce great bodily harm or death.

This bill would further provide that willfully causing or permitting a child to suffer, or inflicting upon unjustifiable mental suffering on a

child, constitutes a violation of this provision regardless of whether the act or acts causing the mental suffering also cause physical injury or harm to the child. *The bill would also provide that evidence that a person has willfully caused, permitted, or inflicted mental suffering may include evidence of an injury to the intellectual or psychological capacity or the emotional condition of a child, as specified.*

~~(3)–~~

(2) *Existing law also authorizes a court to consider any history of abuse in making a determination of the best interest of a child for purposes of determining child custody. Existing law defines “abuse against a child” for this purpose.*

The bill would also revise the definition of “abuse against a child” in making a determination of the best interest of the child, for purposes of determining child custody, to include willfully causing, permitting, or inflicting unjustifiable mental suffering.

(3) Existing law establishes statewide programs for community violence prevention and conflict resolution, and encourages the creation of county task forces to prevent violent crimes against women.

This bill would encourage local law enforcement agencies to develop projects of collaboration between law enforcement officers and mental health professionals in order to address the needs of children and families exposed to violence, as specified, to be funded using grant funding, as available, or available resources within the existing budget of the law enforcement agency.

(4) The bill would also declare the findings and interest of the Legislature with regard to the provisions of the bill.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature hereby finds and declares
2 all of the following:

3 (1) The emotional abuse of children can cause long-term
4 damage to those children, as serious as the damage done by
5 physical abuse.

6 (2) Emotional abuse can permanently damage a child’s self
7 esteem and social competence. Emotional abuse can include
8 humiliating or ridiculing a child, rejecting or isolating a child, or
9 causing the child to witness domestic violence.

1 (3) A chronic pattern of emotional abuse can lead to adverse
2 effects such as borderline personality disorder, eating disorders,
3 substance abuse, aggression or criminality, learning impairments,
4 and low academic achievement.

5 (4) Emotional abuse can be difficult to recognize, and often
6 goes unseen or, when noticed, inadequately addressed. Although
7 certain cases of emotional abuse are criminal under existing law,
8 they can be difficult to prosecute.

9 (b) It is the intent of the Legislature to provide an adequate
10 definition of emotional abuse in order to facilitate the prosecution
11 of cases of emotional abuse; to ensure that emotional abuse of a
12 child is considered by the court in custody proceedings; and to
13 encourage the development of local law enforcement programs to
14 address the needs of children exposed to domestic violence or
15 other violent crime.

16 ~~SEC. 2. Section 3044 of the Family Code is amended to read:~~

17 ~~3044. (a) Upon a finding by the court that a party seeking~~
18 ~~eustody of a child has perpetrated domestic violence against the~~
19 ~~other party seeking custody of the child or against the child or the~~
20 ~~child's siblings, or has perpetrated emotional abuse against the~~
21 ~~child or the child's siblings, within the previous five years, there~~
22 ~~is a rebuttable presumption that an award of sole or joint physical~~
23 ~~or legal custody of a child to a person who has perpetrated~~
24 ~~domestic violence or emotional abuse is detrimental to the best~~
25 ~~interest of the child, pursuant to Section 3011. This presumption~~
26 ~~may only be rebutted by a preponderance of the evidence.~~

27 ~~(b) In determining whether the presumption set forth in~~
28 ~~subdivision (a) has been overcome, the court shall consider all of~~
29 ~~the following factors:~~

30 ~~(1) Whether the perpetrator of domestic violence or emotional~~
31 ~~abuse has demonstrated that giving sole or joint physical or legal~~
32 ~~custody of a child to the perpetrator is in the best interest of the~~
33 ~~child.~~

34 ~~(2) Whether the perpetrator has successfully completed a~~
35 ~~batterer's treatment program that meets the criteria outlined in~~
36 ~~subdivision (e) of Section 1203.097 of the Penal Code.~~

37 ~~(3) Whether the perpetrator has successfully completed a~~
38 ~~program of alcohol or drug abuse counseling if the court~~
39 ~~determines that counseling is appropriate.~~

~~(4) Whether the perpetrator has successfully completed a parenting class if the court determines the class to be appropriate.~~

~~(5) If the perpetrator is on probation or parole, whether he or she is restrained by a protective order granted after a hearing, and whether he or she has complied with its terms and conditions.~~

~~(6) Whether the perpetrator of domestic violence or emotional abuse has committed any further acts of domestic violence.~~

~~(e) In cases in which both parents are perpetrators of domestic violence or emotional abuse, this presumption shall not be applicable.~~

~~(d) For purposes of this section, a person has “perpetrated domestic violence” when he or she is found by the court to have intentionally or recklessly caused or attempted to cause bodily injury, or sexual assault, or to have placed a person in reasonable apprehension of imminent serious bodily injury to that person or to another, or to have engaged in any behavior involving, but not limited to, threatening, striking, harassing, destroying personal property or disturbing the peace of another, for which a court may issue an ex parte order pursuant to Section 6320 to protect the other party seeking custody of the child or to protect the child and the child’s siblings.~~

~~(e) For purposes of this section, a person has “perpetrated emotional abuse” when he or she is found by the court to have caused or permitted a child to suffer, or to have inflicted upon a child, unjustifiable mental suffering.~~

SEC. 2. Section 3011 of the Family Code is amended to read:
3011. In making a determination of the best interest of the child in a proceeding described in Section 3021, the court shall, among any other factors it finds relevant, consider all of the following:

(a) The health, safety, and welfare of the child.

(b) Any history of abuse by one parent or any other person seeking custody against any of the following:

(1) Any child to whom he or she is related by blood or affinity or with whom he or she has had a caretaking relationship, no matter how temporary.

(2) The other parent.

(3) A parent, current spouse, or cohabitant, of the parent or person seeking custody, or a person with whom the parent or person seeking custody has a dating or engagement relationship.

As a prerequisite to the consideration of allegations of abuse, the court may require substantial independent corroboration, including, but not limited to, written reports by law enforcement agencies, child protective services or other social welfare agencies, courts, medical facilities, or other public agencies or private nonprofit organizations providing services to victims of sexual assault or domestic violence. As used in this subdivision, “abuse against a child” means “child abuse” as defined in Section 11165.6 of the Penal Code, *or willfully causing, permitting, or inflicting unjustifiable mental suffering upon a child as defined in Section 273a of the Penal Code*, and abuse against any of the other persons described in paragraph (2) or (3) means “abuse” as defined in Section 6203 of this code.

(c) The nature and amount of contact with both parents, except as provided in Section 3046.

(d) The habitual or continual illegal use of controlled substances or habitual or continual abuse of alcohol by either parent. Before considering these allegations, the court may first require independent corroboration, including, but not limited to, written reports from law enforcement agencies, courts, probation departments, social welfare agencies, medical facilities, rehabilitation facilities, or other public agencies or nonprofit organizations providing drug and alcohol abuse services. As used in this subdivision, “controlled substances” has the same meaning as defined in the California Uniform Controlled Substances Act, Division 10 (commencing with Section 11000) of the Health and Safety Code.

(e) (1) Where allegations about a parent pursuant to subdivision (b) or (d) have been brought to the attention of the court in the current proceeding, and the court makes an order for sole or joint custody to that parent, the court shall state its reasons in writing or on the record. In these circumstances, the court shall ensure that any order regarding custody or visitation is specific as to time, day, place, and manner of transfer of the child as set forth in subdivision ~~(b)~~ (c) of Section 6323.

(2) The provisions of this subdivision shall not apply if the parties stipulate in writing or on the record regarding custody or visitation.

SEC. 3. Section 273a of the Penal Code is amended to read:

1 273a. (a) Any person who, under circumstances or
2 conditions likely to produce great bodily harm or death, willfully
3 causes or permits any child to suffer, or inflicts thereon
4 unjustifiable physical pain or mental suffering, or having the care
5 or custody of any child, willfully causes or permits the person or
6 health of that child to be injured, or willfully causes or permits that
7 child to be placed in a situation where his or her person or health
8 is endangered, shall be punished by imprisonment in a county jail
9 not exceeding one year, or in the state prison for two, four, or six
10 years.

11 (b) Any person who, under circumstances or conditions other
12 than those likely to produce great bodily harm or death, willfully
13 causes or permits any child to suffer, or inflicts upon a child,
14 unjustifiable physical pain or mental suffering, or having the care
15 or custody of any child, willfully causes or permits the person or
16 health of that child to be injured, or willfully causes or permits that
17 child to be placed in a situation where his or her person or health
18 may be endangered, is guilty of a misdemeanor.

19 (c) Any person who willfully causes or permits a child to suffer,
20 or inflicts upon a child, unjustifiable mental suffering commits a
21 violation of this section regardless of whether the act or acts
22 causing, permitting, or inflicting the mental suffering also cause
23 physical injury or harm to the child. *For purposes of this section,*
24 *evidence that a person has willfully caused, permitted, or inflicted*
25 *mental suffering may include evidence of an injury to the*
26 *intellectual or psychological capacity or the emotional condition*
27 *of a child as demonstrated by an observable and substantial*
28 *impairment of his or her ability to function within his or her normal*
29 *range of performance or behavior.*

30 (d) If a person is convicted of violating this section and
31 probation is granted, the court shall require the following
32 minimum conditions of probation:

33 (1) A mandatory minimum period of probation of 48 months.

34 (2) A criminal court protective order protecting the victim from
35 further acts of violence or threats, and, if appropriate, residence
36 exclusion or stay-away conditions.

37 (3) (A) Successful completion of no less than one year of a
38 child abuser's treatment counseling program approved by the
39 probation department. The defendant shall be ordered to begin
40 participation in the program immediately upon the grant of



1 probation. The counseling program shall meet the criteria
2 specified in Section 273.1. The defendant shall produce
3 documentation of program enrollment to the court within 30 days
4 of enrollment, along with quarterly progress reports.

5 (B) The terms of probation for offenders shall not be lifted until
6 all reasonable fees due to the counseling program have been paid
7 in full, but in no case shall probation be extended beyond the term
8 provided in subdivision (a) of Section 1203.1. If the court finds
9 that the defendant does not have the ability to pay the fees based
10 on the defendant's changed circumstances, the court may reduce
11 or waive the fees.

12 (4) If the offense was committed while the defendant was under
13 the influence of drugs or alcohol, the defendant shall abstain from
14 the use of drugs or alcohol during the period of probation and shall
15 be subject to random drug testing by his or her probation officer.

16 (5) The court may waive any of the above minimum conditions
17 of probation upon a finding that the condition would not be in the
18 best interests of justice. The court shall state on the record its
19 reasons for any waiver.

20 SEC. 4. Title 10.5a (commencing with Section 14145) is
21 added to Part 4 of the Penal Code, to read:

22
23 TITLE 10.5a. CHILD ABUSE PREVENTION
24

25 14145. Local law enforcement agencies are encouraged to
26 develop projects of collaboration between law enforcement
27 officers and mental health professionals in order to address the
28 needs of children and families exposed to violence. These projects
29 may pair law enforcement officers with mental health
30 professionals, and may offer training to these teams to help them
31 assess the psychological needs of families in crisis in order to
32 provide immediate, informed intervention. The mental health
33 professionals may, with their law enforcement team members,
34 respond to emergency calls where children have been exposed to
35 domestic violence, serious accidents, violent crime, or any other
36 traumatic event. The mental health professionalism may offer
37 immediate assistance to the children at the time of the call, and the
38 team may make appropriate referrals to community resources,
39 such as counseling and medical services, in order to assist the
40 children in recovering from the trauma.

- 1 Any collaboration project shall be funded using grant funding,
- 2 as available, or available resources within the existing budget of
- 3 the law enforcement agency.

